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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,222	11/02/2001	Ron Bergman	7432.116USU1	2696

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT PAPER NUMBER

3618

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/007,222		BERGMAN, RON	
	<b>Examiner</b>		<b>Art Unit</b>	
	Christopher Boltorff		3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 15, 17-21 is/are rejected.
- 7) ☒ Claim(s) 5, 9-14 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

The amendment filed July 15, 2003 has been entered. Claims 1-21 are pending.

#### ***Drawings***

The corrected drawings were received on July 15, 2003. These drawings are approved.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Powel et al. US 6,167,862.

Powel et al. discloses an air intake system for a vehicle, in the form of an air cleaner or filtration system, having an air intake 18, an engine inlet in communication with the air intake, and a screen 140 interposed between the air intake and the engine air inlet. See Figures 1 and 2; column 2, lines 55-61, and column 3, lines 6-10. An air flow path flows from the air intake, through the screen, and to the engine air inlet such that the air passing through the screen must rise while passing through the screen. This screen arrangement allows debris filtered from the air flowing through the screen to be pulled away from the screen by gravity.

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In regard to claim 21, the system of Powel et al. operates according to a method in which air is drawn through the air intake into an air flow path, then the air is drawn from the air intake and through the screen such that the air rises while passing through the screen, and then the air is drawn from the air flow path into an engine air inlet. See column 2, line 55, through column 3, line 10.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 6-8, 15, 17, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Powel et al. US 6,167,862 in view of Martenas et al. US 5,199,522.

Powel et al. does not disclose a hood structure that defines the air intake or a vehicle with a windshield. However, Martenas et al. teaches that the practice of using a hood 5 to define an air intake for a vehicle air intake system was old and well known in the art at the time the invention was made. See Figures 1-4. The system of Martenas et al. includes a hood 5 with a first portion 23 and a second portion 21, 22 that is engaged to the first portion and is vertically displaced above the first portion. The first and second portions cooperate to define the air intake at aperture 27 and extending through plenum 19. An underlying part 24 of the first portion underlies the second

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portion and the second portion extends horizontally beyond the air intake. Also, the second portion is removable from the first portion.

The air intake defines substantially zero are of projection on a plane above the hood as viewed from above the hood. An air plenum 15 defines at least a part of the air flow path and is in communication with the engine air inlet via the air cleaner 14. Also, the air intake system includes a further air intake 29, and the vehicle includes an operator's cab 6 arranged such that the forward face of the cab is positioned between the air intake and an operator of the vehicle.

From the teachings of Martenas et al., extending the system of Powel et al. such that the air intake is defined by a hood would have been obvious to one of ordinary skill in the art at the time the invention was made. The air cleaner of Powel et al. would serve as a replacement for the air cleaner of Martenas et al. This would provide an air intake system that effectively provides the engine with clean air while allowing clear access to engine compartment components for maintenance and making the hood more rigid to reduce vibration.

In regard to claim 6, integrally forming the first and second portions represents a matter of obvious design choice that does not show insight that is contrary to the understandings and expectations of the prior art. Providing the first and second portions of Martenas et al. as an integrally formed piece would have been obvious to one of ordinary skill in the art at the time the invention was made in order to reduce the number of components requiring assembly.

In regard to claim 18, the examiner takes official notice that operator cabs, like the cab taught by Martenas et al., commonly have windshields at the forward face of the cab. Providing the system of Martenas et al., on a vehicle with a windshield between the air intake and the operator would have been obvious to one of ordinary skill in the art at the time the invention was made. This would help insulate the operator from the noise of the engine compartment.

#### ***Allowable Subject Matter***

Claims 5, 9-14, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed July 15, 2003 have been fully considered but they are not persuasive.

Applicant asserts that claims 1 and 21 distinguish over Powell et al. because the air path of Powell et al. is allegedly not configured such that air must rise while passing through the screen. The examiner respectfully disagrees with this assertion. The air path disclosed by Powell et al. is configured such that the air would rise while passing through the screen. Moreover, claims 1 and 21 only require the air to rise while passing through the screen, without excluding air flowing in additional directions.

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As noted on column 2, lines 60-61, of Powell et al., arrow 188 indicates the airflow path through the entire system. This path begins at snorkel 18, passes through housing 12 and screen (filter assembly) 140, and exits through the outlet of air induction assembly 60. See also Figure 2. Initially, the path is generally horizontal, but after the air has entered the housing it begins to rise and continues to rise as it passes through the screen toward the exit. Lines 39-46 of column 3 of Powell et al. indicate that while the air passes through screen 140 on its upward path it passes through outer and inner walls 150, 152 and a filter media 156. There is no suggestion in Powell et al. that this structure of the screen deflects the air and prevents it from rising through the screen. Rather, Powell et al. strongly suggests that the air will follow the flow path designated by arrow 188 and continue to rise toward the exit of the system. In fact, the suggestion that the air does not rise as it passes through screen 140 is conjecture on the part of Applicant that is contradicted by the suggestions by Powell et al. that the air does rise as it passes through the screen.

Furthermore, claims 1 and 21 only state that air passing through the screen must rise while passing through the screen. This limitation does not exclude the air from flowing in other directions while passing through the screen, as long as the air also rises while passing through the screen. Since the air passing through the screen of Powell et al. rises, the possibility that the air may also pass through the screen in other directions is irrelevant.

Thus, the claims fail to distinguish over the cited art and the rejection of the claims is maintained.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Christopher Bottorff

  
Brian Johnson  
9/29/03